In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-316

THOMAS GEORGE AZZONE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the District of Minnesota, petitioner was convicted of having received and concealed stolen United States postage stamps in violation of 18 U.S.C. 641. He was sentenced to three years' imprisonment. The court of appeals affirmed (Pet. App. A 1-8).

On the basis of a detailed tip by a previously reliable informant, whose information had led to several felony arrests, postal inspectors approached petitioner

who arrived under circumstances predicted by the informant for the sale of the stolen stamps. The officers obtained petitioner's consent to search the car.[1] When they requested the key to the trunk, petitioner dropped it between the window and the door after attempting to divert their attention. He was thereupon arrested, and taken to police headquarters. The agents then recovered the key, opened the trunk, and found the stolen stamps (App. 15-19).[2]

On these facts the court of appeals properly held that the arrest and the search of the trunk were valid. There was clearly probable cause for his arrest and for the search under the principles of *Draper* v. *United States*, 358 U.S. 307. Not only was there substantial corroboration of the information supplied by the reliable informant but petitioner's attempt to conceal the trunk key after indicating he was otherwise agreeable to the search of the interior of the car supported the soundness of the belief that the contra-

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[1] The exchange was somewhat ambiguous as to the scope of the consent given. Petitioner argues that there was no consent to search the trunk, but only the interior. The district court made no finding on this issue. The court of appeals was nevertheless of the view that "Azzone gave the officers permission to search his car * * *" (Pet. App. A 5). But the question is not relevant because of the existence of probable cause here.

[2] "App." refers to the Appendix in the court of appeals, which contains the testimony offered at the pre-trial motion to suppress. At the conclusion of the testimony, petitioner's counsel admitted that there were "reasonable grounds" for the search (App. 19) and the court denied the motion. Petitioner, through different counsel, renewed the motion at trial and the district judge denied it following an adversary presentation at which the foregoing facts were summarized (App. 21-27).

band stamps were in the trunk. The fact that petitioner was removed from the scene before the search of the trunk took place did not invalidate the search. See *Chambers* v. *Maroney*, 399 U.S. 42.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1972.

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